

## DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 95-10]

MN 2125-AD59

## Advance Construction of Federal-Aid Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule with request for comments.

**SUMMARY:** The FHWA is amending its regulation on advance construction of Federal-aid highway projects to incorporate changes made by the Dire Emergency Supplemental Appropriations Act, 1992, Pub. L. 102-302, 106 Stat. 248, and to provide more flexible funding arrangements for the States.

**DATES:** This interim final rule is effective July 19, 1995. Comments must be received by September 18, 1995.

**ADDRESSES:** All written, signed comments should refer to FHWA Docket No. 95-10, Room 4232, HCC-10, office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Max I. Inman, Office of Fiscal Services, (202) 366-2853, or Steve M. Rochlis, Office of the Chief Counsel, (202) 366-0761, Federal Highway Administration, 400 seventh Street SW., Washington, D.C. 20596. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The Dire Emergency Supplemental Appropriations Act, 1992, Pub. L. 102-302, 106 Stat. 248, included a revision to section 115 of title 23, U.S.C., to authorize advance construction on surface transportation program projects and other technical changes.

Section 115 allows States to advance the construction of Federal-aid highway

projects without requiring that Federal funds be obligated at the time the FHWA approves the project. States may proceed with projects using only State funds and then request that Federal funds be made available at a later time.

The Dire Emergency Supplemental Appropriations Act, 1992, made the following changes to 23 U.S.C. 115:

(a) Authorized advance construction on the surface transportation program, the national highway system, and congestion mitigation and air quality improvement program projects.

(b) Limited the amount which may be approved for advance construction to a State's expected apportionments.

In addition to the changes made by the Dire Emergency Supplemental Appropriations Act, 1992, the regulation is being revised to provide additional flexibility to the States by allowing partial conversions of advance construction instead of requiring the full amount to be converted at one time.

## Section-by-Section Analysis

## Section 630.701 Purpose

There are no changes to this section.

## Section 630.703 Eligibility

This section is revised to authorize advance construction on the surface transportation program, the national highway system, congestion mitigation and air quality improvement programs, and delete references to the secondary, urban, rail-highway crossing, and hazard elimination programs which are no longer eligible for advance construction projects.

## Section 630.705 Procedures

There are no changes to this section.

## Section 630.707 Limitation

This section is revised to remove the previous limitation which provided States with a window (January 1, 1987 to September 30, 1990) in which advance construction projects could be approved for a State up to its expected apportionments plus an amount equal to one additional year of apportionment (except for Interstate construction), and to add the new limitation on advance construction approvals.

## Section 630.709 Conversion to a Regular Federal-Aid Project

This section is revised to remove paragraph (b) and to redesignate paragraph (c) as (b). Removing paragraph (b) provides flexibility to the States when converting projects to regular funding by allowing partial conversions instead of requiring the full amount to be converted at one time, as paragraph (b) provided.

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**Section 630.712 Payment of Bond Interest**

There are no changes to this section.

**Rulemaking Notices and Analyses**

With regard to the amendments made by this interim final rule in accordance with the Dire Emergency Supplemental Appropriations Act, the FHWA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) and that good cause exists to dispense with the 30-day delayed effective date ordinarily required under 5 U.S.C. 553(d) because these changes are statutorily mandated. Therefore, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, the amendment allowing States to partially convert advance construction projects to regular Federal-aid projects removes the restriction on such conversions which required the full Federal share of project costs to be converted at one time. Thus, this action "grants or recognizes an exemption or relieves a restriction" in accordance with 5 U.S.C. 553(d)(1) and therefore is exempted from the 30-day delayed effective date requirement.

In an April 8, 1994, *Federal Register* notice, the FHWA announced its Innovative Financing Test and Evaluation Project to provide incentives to encourage States, private investors, and the financial community to increase investment in surface transportation projects, 59 FR 16889. The modification to the advance construction conversion provision included in this interim final rule has been made at the request of several States in response to this project, and will provide States with the option of partially converting advance construction projects to regular Federal-aid projects. States may continue to fully convert projects if they would like to do so. Therefore, the FHWA has concluded that prior notice and opportunity for comment on this effort to provide more flexible funding arrangements for the States, at their request, are unnecessary under 5 U.S.C. 553(b)(3)(B).

For these reasons, the FHWA has also determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. Therefore, the FHWA is proceeding directly to an interim final rule which is effective upon its date of publication.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this action is not a significant action within the meaning of Executive Order P2866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This rule affects the manner in which State highway agencies financially administer project obligations. This interim final rule will permit States to proceed with projects using only State funds and then request that Federal funds be made available at a later time. This amendment will provide States with an additional financing option which they may choose to use to more effectively manage their Federal apportionments. This rule will not result in a major increase in costs or prices for State or local governments and will not have an adverse effect on competition, employment, investment, productivity, innovation or on the ability to compete with foreign enterprises. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities.

This rulemaking is directed toward State governments, and it is initiated in order to implement a statutory mandate. The primary impact of this action will be to provide the States with additional flexibility in using advance construction procedures. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12812 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12622, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule does not impose additional costs or burdens on the States, including the likely source of funding for the States nor does it affect the ability of the States to discharge traditional State governmental functions. The primary intent of this rule is to provide the States with additional flexibility in using advance construction procedures.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

**National Environmental Policy Act**

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 630**

Bonds, Government contracts, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: July 11, 1995.

Rodney E. Slater,  
Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, chapter I, part 630 as set forth below.

**PART 630—PRECONSTRUCTION PROCEDURES**

1. The authority citation for part 630 is revised to read as follows and all other authority citations which appear throughout part 630 are removed:

**Authority:** 23 U.S.C. 101(a), 104, 105, 106, 109, 110, 113, 115, 118, 120(e), 121(c), 125, 134, 315, 320, and 402(a); 23 CFR 1.32, 630; and 49 CFR 1.48(b).

**SUBPART G—[REVISED]**

2. Subpart G of part 630 is revised to read as follows:

## Subpart G—Advance Construction of Federal-Aid Projects

## S e c .

630.701 Purpose.

630.703 Eligibility.

630.705 Procedures.

630.707 Limitation.

630.709 Conversion to a regular Federal-aid project.

830.711 Payment of bond interest.

## Subpart G—Advance Construction of Federal-Aid Projects

**§ 630.701 Purpose.**

The purpose of this subpart is to prescribe procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State.

**§ 630.703 Eligibility.**

(a) The State Highway Agency (SHA) may proceed with a highway substitute, congestion mitigation and air quality improvement program, surface transportation program, bridge replacement and rehabilitation, or planning and research project in accordance with this subpart, provided the SHA:

(1) Has obligated all funds apportioned or allocated to it under 23 U.S.C. 103(e)(4)(H), 104(b)(2), 104(b)(3), 104(f), 144, or 307, as the case may be for the proposed project, or

(2) Has used all obligation authority distributed to it, or

(3) Demonstrates that it will use all obligation authority distributed to it.

(b) The SHA may proceed with a National Highway System (NHS) or Interstate project in accordance with this subpart without regard to apportionment or obligation authority balances. Interstate projects include Interstate construction and Interstate maintenance.

**§ 630.705 Procedures.**

(a) An advance construction project shall meet the same requirements and be processed in the same manner as a regular Federal-aid project, except,

(1) The FHWA authorization does not constitute any commitment of Federal funds on the project, and

(2) The FHWA shall not reimburse the State until the project is converted under § 630.709.

(b) Project numbers shall be identified by the letters "AC" preceding the regular project number prefix.

(c) If the SHA plans to claim bond interest costs under § 630.711, it shall include in its request for authorization the estimated federally participating bond interest cost.

(d) The SHA shall submit a final voucher to the FHWA upon completion

of the project even though the project has not been converted. If the SHA is claiming bond interest costs under § 630.711, it shall certify on the final voucher that the bond proceeds were expended in the construction of the project and shall include a computation of the eligible interest costs.

**§ 630.707 Limitation.**

A request to approve an advance construction project is limited to a State's expected apportionment of authorized funds which are eligible to finance the project.

**§ 630.709 Conversion to a regular Federal-aid project.**

(a) The SHA may submit a written request to the FHWA that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available.

(b) Subsequent to FHWA approval the SHA may claim reimbursement for the Federal share of project costs incurred, provided the project agreement has been executed. If the SHA has previously submitted a final voucher, the FHWA will process the voucher for payment.

**§ 630.711 Payment of bond interest.**

(a) For interstate projects authorized by the FHWA after January 5, 1983, and for Interstate 4R, Interstate maintenance, primary and NHS projects authorized by the FHWA after April 2, 1987, interest earned and payable on bonds issued by a State is an eligible cost of construction as follows:

(1) Participating interest cost is based on the actual expenditure of bond proceeds on the Federal-aid project. The interest on the bonds is applied to the amount of bond proceeds expended on the project from the date of expenditure.

(2) The amount of interest determined in paragraph (a)(1) of this section shall not exceed the estimated increase in the physical construction cost of the project which would have occurred had the project been authorized on the date of conversion. The estimated increase in the physical construction cost is determined by applying the increase, if any, in the national construction cost index in effect on the date of conversion over the index in effect on the date of the FHWA authorization, to the actual cost of physical construction.

(b) For Interstate projects under physical construction on January 1, 1963, and converted to a regular Federal-aid project after January 1, 1983, bond interest is eligible in accordance with paragraph (a)(1) of this section.

The restriction in paragraph (a)(2) of this section does not apply.

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